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06-27-06
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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Golden State Water Company (D 133 W) for an Order Pursuant to Public Utilities Code Section 851 Approving a Stipulation in a Water Rights Adjudication, and for an Order Pursuant to Section 454 approving the Ratemaking Treatment of the costs of the Adjudication and Settlement.

Application 06-02-026
(Filed February 24, 2006)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE**

Golden State Water Company (Golden State) requests that the Commission approve the company's execution of a stipulation entered into to resolve major issues in a groundwater adjudication pending before the superior court in Santa Clara County.¹ Golden State also requests certain ratemaking decisions concerning its attorneys' fees and other obligations to be incurred as part of the settlement.

A prehearing conference (PHC) was held on Wednesday, April 19, 2006, in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California 94102.

¹ Santa Maria Valley Water Conservation Dist. v. City of Santa Maria, Lead Case No. CV 770214 (Santa Clara County Superior Court) (Santa Maria Valley Groundwater Basin).

This ruling determines the scope, schedule, necessity of a hearing, and other matters concerning the application in accordance with Rules 6(a) and 6.3 of the Commission's Rules of Practice and Procedure (Rules).²

1. Parties to Proceeding

The applicant is the Golden State. Golden State operates the Santa Maria District encompassing four service areas within the unincorporated area of Santa Barbara County and one service area within the unincorporated area of San Luis Obispo County. One protestant is the Division of Ratepayer Advocates (DRA). The Orcutt Area Advisory Group, Inc. (Orcutt) appeared at the PHC and moved to intervene and protest the application; and, without objection, Orcutt's motion was granted and its protest filed of record. Applicant, protestant,³ intervenor, and any subsequent parties to this proceeding are referred to herein as "parties," and they shall comply with this ruling.

2. Assigned Commissioner; Principal Hearing Officer

John A. Bohn is the Assigned Commissioner. Pursuant to Public Utilities Code Section 1701.3, Administrative Law Judge (ALJ) John E. Thorson is designated as the principal hearing officer.

² The Commission's Rules are available on the Commission's website: www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/46095.htm.

³ Golden State was given leave to file a response to the protest on or before April 24, 2006. Orcutt was advised of the Commission's intervenor compensation program and its need, if compensation is requested, to file a notice of intent to claim compensation within 30 days of the PHC. *See* Public Utilities Code Section 1801 *et seq.*

3. Categorization and Need for Hearing

This ruling confirms the Commission's preliminary categorization of this proceeding as ratesetting. This ruling, only as to categorization, is appealable under the provisions of Rule 6.4 of the Commission's Rules. This ruling confirms that evidentiary hearings are necessary as factual issues are in dispute.

4. Ex Parte Communications

Since this proceeding involves ratesetting, *ex parte* communications with the Assigned Commissioner, other Commissioners, their advisors, and the ALJ are only permitted as described at Public Utilities Code Section 1701.3(c) and Rule 7.

5. Scope of the Proceedings

Applicant requests an order of the Commission, pursuant to Public Utilities Code Section 851, approving a stipulation in a groundwater rights adjudication, and for an order pursuant to Section 454 approving the ratemaking treatment of the costs of the adjudication and settlement. DRA protested Golden State's application and recommends that the Commission address the Section 851 issues in this proceeding but defer certain ratemaking issues to a subsequent general rate case. Orcutt's protest alleges that Golden State failed to consult with ratepayers concerning the terms of the stipulation and impermissibly seeks to have ratepayers, rather than shareholders, bear the costs of the adjudication and settlement.

While Golden State is scheduled to file its general rate case for these districts in 2007, the company argues that some of its obligations under the proposed settlement can only be fairly evaluated if the rate implications of these obligations are determined in this proceeding. We agree and, consequently, do

not accept DRA's request that these issues be postponed to the general rate case. While the proposed settlement is formally between Golden State and other adjudication parties, Golden State's ratepayers are implicitly involved. The company and ratepayers (as well as the Commission) should have an understanding of the overall rate implications of the settlement (*e.g.*, whether litigation expenses will be capitalized or expensed, borne by ratepayers or shareholders) even though rates of return and other ratesetting functions are properly left to the next general rate case.

As the proceeding moves forward, parties should develop the record with an eye toward explaining how the positions they take: (a) promote both reasonable rates in both the short term and the long term as well as short- and long-term viability; (b) affect the utility's ability to ensure water quality in the short and long term; (c) ensure proper management of the water resources being adjudicated; and (d) affect infrastructure development and investment.

6. Specific Issues to Be Addressed

The specific factual and legal issues to be decided in the proceeding are as follows:

- a. As required by Public Utilities Code Section 851, is Golden State's execution of the stipulation entered into as a resolution of *Santa Maria Valley Water Conservation District v. City of Santa Maria*, No. CV 770214 (Santa Clara County Super. Ct.) just and reasonable, in the public interest, and, therefore, should be approved?
- b. Are Golden State's obligations and undertakings under the proposed settlement just, reasonable, and in the public interest?
- c. What are the ratepayers' risks, benefits, and costs under the stipulation?

- d. As to litigation expenses already incurred in the groundwater adjudication and negotiation of the proposed stipulation (approximately \$5.5 million):
 - (i) Has \$2.7 million of the \$5.5 million already been incorporated into ratebase as construction work in progress under prior Commission decisions? Should this amount be authorized as Utility Plant Account 306 (capital)? If the Commission has not previously determined who should pay these expenses, should ratepayers pay all, a portion, or none of this amount?
 - (ii) Should \$2.8 million of the \$5.5 million be authorized as Utility Plant Account 306 (capital)? Should ratepayers pay all, a portion, or none of this amount?
 - (iii) Has the \$5.5 million in litigation costs been reasonably expended?
- e. As to future litigation costs incurred in the groundwater adjudication and negotiation of the proposed stipulation, should these amounts be authorized as Utility Plant Account 306 (capital)? Should ratepayers pay all, a portion, or none of these amounts?

Protestants do not object to Golden State's following requests; and, subject to Commission review, these requests will be included in the proposed decision resulting from this proceeding:

Golden State will be authorized to establish two memoranda accounts: (1) a new Santa Maria Stipulation Capital Cost memorandum account to track future capital costs and carrying costs related to defending its water rights in the adjudication, securing and defending the stipulation, costs related to resolving the claims of non-stipulating parties in the adjudication, and Golden State's share of construction costs of

a new pipeline as provided by the settlement;⁴ and (2) a new Santa Maria Stipulation O&M Expenses memorandum account to track O&M expenses incurred pursuant to the terms of the stipulation.⁵

If the Commission approves the proposed settlement, the reasonableness of incurring the types of costs represented by these memoranda accounts will have been determined; however, the reasonableness of specific, actual costs posted to these accounts will be deferred to the next general rate case.

7. Schedule

The scheduling of this proceeding is difficult because of the unique subject before the Commission, *i.e.*, the reasonableness of a multi-party settlement in a complicated, large groundwater adjudication. On the one hand, DRA indicates that it needs to contract for an outside expert to advise on the settlement and that such an expert may not be available before August 2006. On the other hand, Golden State indicates that the proposed settlement is in one of several phases of the ongoing superior court adjudication. The Commission's delay in considering the proposed settlement may also delay and complicate the superior court's management of the adjudication.

After weighing these considerations, including our desire to accommodate the superior court, the following schedule reflects a determination to complete this proceeding in a fair but expeditious manner. Although not adopting DRA's

⁴ These capital expenses include Nipomo pipeline expenses.

⁵ These O&M expenses include Twitchell Management Authority expenses, Nipomo ongoing water expenses, and other Nipomo expenses.

recommendation, the schedule does allow more time than proposed by Golden State. The schedule for these proceedings is as follows:

Event	Date
Golden State reply to Orcutt protest	April 24, 2006
Discovery in A.05-12-001	Opens: April 19 Closes: October 2
Mandatory in-person settlement conference among the parties	Before September 1
Public participation hearing or similar event in Santa Maria District area	September or October (parties to agree on specific date with ALJ concurrence)
Protestants' submission of prepared testimony	October 18
Parties to meet with ALJ neutral to explore settlement & alternative dispute resolution (additional meetings may occur)	October 20 9 a.m. to 4:00 p.m.
Applicant's submission of rebuttal testimony	November 1
Deadline for motions <i>in limine</i>	November 3
Responses to motions <i>in limine</i>	November 7
Final PHC; consideration of motions <i>in limine</i>	November 9 10:00 a.m.
Evidentiary hearing (limited to three days)	November 15-17 9:00 a.m. – 4:00 p.m.
Concurrent opening briefs due	December 18
Concurrent reply briefs due submission	January 3, 2007
Proposed decision (no later than)	April 30
Commission consideration (estimated no later than)	May 31
18-month deadline for A.05-12-001	August 25
Unless otherwise indicated or announced, all meetings, conferences, and hearings will be held at: Commission Courtroom State Office Building 505 Van Ness Avenue San Francisco, CA 94102	

8. Public Participation Hearing

Orcutt requested a public participation hearing (PPH) on the application. While PPHs are usually reserved for general rate cases or similarly large and

complex cases, a public participation opportunity will be scheduled in this proceeding. This opportunity may be a traditional PPH in the district or an opportunity, using the Commission's video-conferencing equipment, to allow public comment from a location in or near the district. This event will be held sometime during September or October 2006. After consultation with the principal hearing officer and other parties, Golden State shall contact the Public Advisor to determine the date, location, and format of the PPH and the content and method of giving notice to ratepayers.

9. Alternative Dispute Resolution

The possible use of alternative dispute resolution (ADR) methods was discussed at the initial PHC. The parties shall meet with an ALJ neutral, as indicated in the above schedule, to explore settlement and the use of an ADR processes that might assist in the resolution of their dispute. *See* Resolution ALJ-185 (ADR). If the parties submit a proposed settlement for approval, they shall conform to the requirements of the Commission's settlement rules (Rule 51 *et seq.*).

10. Discovery

Discovery will be conducted according to the Rules. If the parties have discovery disputes they are unable to resolve by meeting and conferring, they shall raise these disputes under the Commission's Law and Motion procedure. (*See* Resolution ALJ-164 (September 16, 1992).)

11. Service Lists/Filing and Service of Documents

The official service lists for these proceedings are attached to this ruling. The parties shall notify the Commission's Process Office of any address, telephone, or electronic mail (e-mail) change to a service list. The updated

service list for each case is available on the Commission's Web page maintained for these proceedings.

Rule 2.3.1, "Service by Electronic Mail," applies to these proceedings.

Therefore, **IT IS RULED** that:

1. The parties, scope of the proceeding, specific issues to be addressed and service list are set forth in paragraphs 1, 5, 6, and 11, above.
2. Administrative Law Judge (ALJ) John E. Thorson is the principal hearing officer.
3. The preliminary categorization of Application 06-02-026 as ratesetting is confirmed. An evidentiary hearing is required.
4. The *ex parte* prohibition of Public Utilities Code Section 1701.3(c) and Rule 7 apply.
5. The schedule for the proceedings is set forth in paragraph 7.
6. Discovery will be conducted and discovery disputes will be resolved pursuant to paragraph 10.
7. Pursuant to paragraph 9, the parties shall meet with an ALJ neutral to explore settlement and alternative disputes resolution opportunities. If the parties reach a proposed settlement, they shall submit it in this proceeding for review and approval as provided by the Commission's settlement rules (Rule 51 *et seq.*).

Dated June 27, 2006, at San Francisco, California.

/s/ JOHN A. BOHN
John A. Bohn
Assigned Commissioner

/s/ JOHN E. THORSON
John E. Thorson
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated June 27, 2006, at San Francisco, California.

/s/ ELVIRA NIZ

Elvira Niz

SERVICE LIST IN A.06-02-026

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